

ORIGINAL

1 LYNN HUBBARD, III, SBN 69773
2 SCOTTLINN J HUBBARD, IV, SBN 212970
3 **DISABLED ADVOCACY GROUP, APLC**
4 12 Williamsburg Lane
5 Chico, CA 95926
6 Telephone: (530) 895-3252
7 Facsimile: (530) 894-8244

FILED
08 FEB 21 PM 3:29
U.S. DISTRICT COURT OF CALIF.
BY: *PM* DEPUTY

8 Attorneys for Plaintiff

9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11
12
13 BARBARA HUBBARD,
14 Plaintiff,

15 vs.

16 S & C RAMIREZ ENTERPRISES,
17 INC. dba McDONALD'S;
18 McDONALD'S CORP.,
19 Defendants.

No. '08 CV 0336 JAH POR

Plaintiff's Complaint

I. SUMMARY

1. This is a civil rights action by plaintiff Barbara Hubbard (“Hubbard”) for discrimination at the building, structure, facility, complex, property, land, development, and/or surrounding business complex known as:

McDonald's
707 West San Ysidro Boulevard
San Ysidro, CA 92173
(hereafter “the Restaurant”)

2. Hubbard seeks damages, injunctive and declaratory relief, attorney fees and costs, against S & C Ramirez Enterprises, Inc. dba McDonald's and McDonald's Corp. (collectively “McDonald's”) pursuant to the Americans with Disabilities Act of 1990, (42 U.S.C. §§ 12101 et seq.), and related California statutes.

II. JURISDICTION

3. This Court has original jurisdiction under 28 U.S.C. §§ 1331 and 1343 for ADA claims.

4. Supplemental jurisdiction for claims brought under parallel California law—arising from the same nucleus of operative facts—is predicated on 28 U.S.C. § 1367.

5. Hubbard’s claims are authorized by 28 U.S.C. §§ 2201 and 2202.

III. VENUE

6. All actions complained of herein take place within the jurisdiction of the United States District Court, Southern District of California, and venue is invoked pursuant to 28 U.S.C. § 1391(b), (c).

IV. PARTIES

7. McDonald's owns, operates, or leases the Restaurant, and consists of a person (or persons), firm, or corporation.

8. Hubbard has multiple conditions that affect one or more major life functions. She requires the use of motorized wheelchair and a mobility-equipped vehicle, when traveling about in public. Consequently, Hubbard is “physically disabled,” as defined by all applicable California and United States laws, and a member of the public whose rights are protected by these laws.

V. FACTS

9. The Restaurant is an establishment serving food and drink, open to the public, which is intended for nonresidential use and whose operation affects commerce.

10. Hubbard visited the Restaurant and encountered barriers (both physical and intangible) that interfered with—if not outright denied—her ability to use and enjoy the goods, services, privileges, and accommodations offered at the facility. To the extent known by Hubbard, the barriers at the Restaurant included, but are not limited to, the following:

- Tow away signage is not posted at all entrances;
- The entrances that do have tow away signage posted use incorrect signs;
- The International Symbol of Accessibility (“ISA”) painted inside the accessible parking stall is not the correct sign;
- The platform at the bottom of the ramp is not 60 inches by 60 inches;
- There is an abrupt change in elevation at the end of the access aisle due to the protruding ramp;
- The accessible route to the Restaurant has multiple areas where the slope and/or cross slope exceed 2.0%;
- The platform at the end of the ramp has a cross slope that exceeds 2.0%;
- There is no ISA on the pull side of the entrance door;
- The food service counter is too high and does not have a lowered portion to accommodate patrons in wheelchairs;
- There is no seating properly designated as being accessible to the disabled;

Hubbard v. S & C Ramirez Enterprises, Inc. et al.
Plaintiff's Complaint

- 1 • There is no accessible seating provided that has a space 30 inches wide by
- 2 27 inches high by 19 inches deep to accommodate a wheel chair patron
- 3 (See Figure 45);
- 4 • The restroom door lacks the required strike side clearance on the pull side;
- 5 • The stall door is not self-closing;
- 6 • The lock on the inside of the stall door is mounted too high; and,
- 7 • There is an excessive cross slope on the platform in front of the entrance
- 8 door.

9 These barriers prevented Hubbard from enjoying full and equal access.

10 11. Hubbard was also deterred from visiting the Restaurant because she
11 knew that the Restaurant's goods, services, facilities, privileges, advantages, and
12 accommodations were unavailable to physically disabled patrons (such as
13 herself). She continues to be deterred from visiting the Restaurant because of the
14 future threats of injury created by these barriers.

15 12. Hubbard also encountered barriers at the Restaurant, which violate
16 state and federal law, but were unrelated to her disability. Nothing within this
17 Complaint, however, should be construed as an allegation that Hubbard is
18 seeking to remove barriers unrelated to her disability.

19 13. McDonald's knew that these elements and areas of the Restaurant
20 were inaccessible, violate state and federal law, and interfere with (or deny)
21 access to the physically disabled. Moreover, McDonald's has the financial
22 resources to remove these barriers from the Restaurant (without much difficulty
23 or expense), and make the Restaurant accessible to the physically disabled. To
24 date, however, McDonald's refuses to either remove those barriers or seek an
25 unreasonable hardship exemption to excuse non-compliance.

26 14. At all relevant times, McDonald's has possessed and enjoyed
27 sufficient control and authority to modify the Restaurant to remove impediments
28 to wheelchair access and to comply with the Americans with Disabilities Act

1 Accessibility Guidelines and Title 24 regulations. McDonald's has not removed
2 such impediments and has not modified the Restaurant to conform to
3 accessibility standards. McDonald's has intentionally maintained Restaurant in
4 its current condition and has intentionally refrained from altering the Restaurant
5 so that it complies with the accessibility standards.

6 15. Hubbard further alleges that the (continued) presence of barriers at
7 the Restaurant is so obvious as to establish McDonalds' discriminatory intent.¹
8 On information and belief, Hubbard avers that evidence of this discriminatory
9 intent includes McDonalds' refusal to adhere to relevant building standards;
10 disregard for the building plans and permits issued for the Restaurant;
11 conscientious decision to the architectural layout (as it currently exists) at the
12 Restaurant; decision not to remove barriers from the Restaurant; and allowance
13 that the Restaurant continues to exist in its non-compliant state. Hubbard further
14 alleges, on information and belief, that McDonald's is not in the midst of a
15 remodel, and that the barriers present at the Restaurant are not isolated (or
16 temporary) interruptions in access due to maintenance or repairs.²

17 VI. FIRST CLAIM

18 Americans with Disabilities Act of 1990

19 Denial of "Full and Equal" Enjoyment and Use

20 16. Hubbard incorporates the allegations contained in paragraphs 1
21 through 15 for this claim.

22 17. Title III of the ADA holds as a "general rule" that no individual
23 shall be discriminated against on the basis of disability in the full and equal
24 enjoyment (or use) of goods, services, facilities, privileges, and accommodations
25 offered by any person who owns, operates, or leases a place of public
26 accommodation. 42 U.S.C. § 12182(a).

27 ¹ E.g., *Gunther v. Lin*, 144 Cal.App.4th 223, fn. 6

28 ² Id.; 28 C.F.R. § 36.211(b)

Hubbard v. S & C Ramirez Enterprises, Inc. et al.
Plaintiff's Complaint

1 18. McDonald's discriminated against Hubbard by denying "full and
2 equal enjoyment" and use of the goods, services, facilities, privileges or
3 accommodations of the Restaurant during each visit and each incident of
4 deterrence.

5 Failure to Remove Architectural Barriers in an Existing Facility

6 19. The ADA specifically prohibits failing to remove architectural
7 barriers, which are structural in nature, in existing facilities where such removal
8 is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). The term "readily
9 achievable" is defined as "easily accomplishable and able to be carried out
10 without much difficulty or expense." *Id.* § 12181(9).

11 20. When an entity can demonstrate that removal of a barrier is not
12 readily achievable, a failure to make goods, services, facilities, or
13 accommodations available through alternative methods is also specifically
14 prohibited if these methods are readily achievable. *Id.* § 12182(b)(2)(A)(v).

15 21. Here, Hubbard alleges that McDonald's can easily remove the
16 architectural barriers at the Restaurant without much difficulty or expense, and
17 that McDonald's violated the ADA by failing to remove those barriers, when it
18 was readily achievable to do so.

19 22. In the alternative, if it was not "readily achievable" for McDonald's
20 to remove the Restaurant's barriers, then McDonald's violated the ADA by
21 failing to make the required services available through alternative methods,
22 which are readily achievable.

23 Failure to Design and Construct an Accessible Facility

24 23. On information and belief, the Restaurant was designed or
25 constructed (or both) after January 26, 1992—independently triggering access
26 requirements under Title III of the ADA.

27 24. The ADA also prohibits designing and constructing facilities for
28 first occupancy after January 26, 1993, that aren't readily accessible to, and

1 usable by, individuals with disabilities when it was structurally practicable to do
2 so. 42 U.S.C. § 12183(a)(1).

3 25. Here, McDonald's violated the ADA by designing or constructing
4 (or both) the Restaurant in a manner that was not readily accessible to the
5 physically disabled public—including Hubbard—when it was structurally
6 practical to do so.³

7 Failure to Make an Altered Facility Accessible

8 26. On information and belief, the Restaurant was modified after
9 January 26, 1992, independently triggering access requirements under the ADA.

10 27. The ADA also requires that facilities altered in a manner that affects
11 (or could affect) its usability must be made readily accessible to individuals with
12 disabilities to the maximum extent feasible. 42 U.S.C. § 12183(a)(2). Altering
13 an area that contains a facility's primary function also requires adding making
14 the paths of travel, bathrooms, telephones, and drinking fountains serving that
15 area accessible to the maximum extent feasible. *Id.*

16 28. Here, McDonald's altered the Restaurant in a manner that violated
17 the ADA and was not readily accessible to the physically disabled public—
18 including Hubbard—to the maximum extent feasible.

19 Failure to Modify Existing Policies and Procedures

20 29. The ADA also requires reasonable modifications in policies,
21 practices, or procedures, when necessary to afford such goods, services,
22 facilities, or accommodations to individuals with disabilities, unless the entity
23 can demonstrate that making such modifications would fundamentally alter their
24 nature. 42 U.S.C. § 12182(b)(2)(A)(ii).

25 30. Here, McDonald's violated the ADA by failing to make reasonable
26 modifications in policies, practices, or procedures at the Restaurant, when these
27

28 ³ Nothing within this Complaint should be construed as an allegation that plaintiff is bringing this action as a
private attorney general under either state or federal statutes.

Hubbard v. S & C Ramirez Enterprises, Inc. et al.
Plaintiff's Complaint

1 modifications were necessary to afford (and would not fundamentally alter the
2 nature of) these goods, services, facilities, or accommodations.

3 31. Hubbard seeks all relief available under the ADA (*i.e.*, injunctive
4 relief, attorney fees, costs, legal expense) for these aforementioned violations. 42
5 U.S.C. § 12205.

6 32. Hubbard also seeks a finding from this Court (*i.e.*, declaratory
7 relief) that McDonald's violated the ADA in order to pursue damages under
8 California's Unruh Civil Rights Act or Disabled Persons Act.

9 VII. SECOND CLAIM

10 Disabled Persons Act

11 33. Hubbard incorporates the allegations contained in paragraphs 1
12 through 30 for this claim.

13 34. California Civil Code § 54 states, in part, that: Individuals with
14 disabilities have the same right as the general public to the full and free use of
15 the streets, sidewalks, walkways, public buildings and facilities, and other public
16 places.

17 35. California Civil Code § 54.1 also states, in part, that: Individuals
18 with disabilities shall be entitled to full and equal access to accommodations,
19 facilities, telephone facilities, places of public accommodation, and other places
20 to which the general public is invited.

21 36. Both sections specifically incorporate (by reference) an individual's
22 rights under the ADA. See Civil Code §§ 54(c) and 54.1(d).

23 37. Here, McDonald's discriminated against the physically disabled
24 public—including Hubbard—by denying them full and equal access to the
25 Restaurant. McDonald's also violated Hubbard's rights under the ADA, and,
26 therefore, infringed upon or violated (or both) Hubbard's rights under the
27 Disabled Persons Act.

38. For each offense of the Disabled Persons Act, Hubbard seeks actual damages (both general and special damages), statutory minimum damages of one thousand dollars (\$1,000), declaratory relief, and any other remedy available under California Civil Code § 54.3.

39. She also seeks to enjoin McDonald's from violating the Disabled Persons Act (and ADA) under California Civil Code § 55, and to recover reasonable attorneys' fees and incurred under California Civil Code §§ 54.3 and 55.

VIII. THIRD CLAIM

Unruh Civil Rights Act

40. Hubbard incorporates the allegations contained in paragraphs 1 through 30 for this claim.

41. California Civil Code § 51 states, in part, that: All persons within the jurisdiction of this state are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.

42. California Civil Code § 51.5 also states, in part, that: No business establishment of any kind whatsoever shall discriminate against any person in this state because of the disability of the person.

43. California Civil Code § 51(f) specifically incorporates (by reference) an individual's rights under the ADA into the Unruh Act.

44. McDonalds' aforementioned acts and omissions denied the physically disabled public—including Hubbard—full and equal accommodations, advantages, facilities, privileges and services in a business establishment (because of their physical disability).

45. These acts and omissions (including the ones that violate the ADA) denied, aided or incited a denial, or discriminated against Hubbard by violating the Unruh Act.

2. Declaratory relief that McDonald's violated the ADA for the purposes of Unruh Act or Disabled Persons Act damages.
3. Statutory minimum damages under either sections 52(a) or 54.3(a) of the California Civil Code (but not both) according to proof.
4. Attorneys' fees, litigation expenses, and costs of suit.⁴
5. Interest at the legal rate from the date of the filing of this action.

DATED: February 20, 2008 DISABLED ADVOCACY GROUP, APLC



LYNN HUBBARD, III
Attorney for Plaintiff

⁴ This includes attorneys' fees under California Code of Civil Procedure § 1021.5.
Hubbard v. S & C Ramirez Enterprises, Inc. et al.
Plaintiff's Complaint

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

BARBARA HUBBARD

(b) County of Residence of First Listed Plaintiff SAN DIEGO

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

DISABLED ADVOCACY GROUP, APLC (530) 895-3252
12 WILLIAMSBURG LANE CHICO, CA 95926

DEFENDANTS

S & C RAMIREZ ENTERPRISES, INC. dba McDONALD'S;
McDONALD'S CORPORATION

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorneys (If Known)

BY:

DEPUTY

'08 CV 0336 JAH POR

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- (For Diversity Cases Only)
- | | | | | | |
|---|--------------------------------|--------------------------------|---|--------------------------------|--------------------------------|
| Citizen of This State | PTF <input type="checkbox"/> 1 | DEF <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | PTF <input type="checkbox"/> 4 | DEF <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input checked="" type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
42 U.S.C. Section 12101, et seq.

Brief description of cause:
Ongoing violations of the ADA Construction Standards

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

02/20/2008

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

14932

AMOUNT

\$350

APPLYING IFP

JUDGE

MAG. JUDGE

sa 2/21/08

**UNITED STATES
DISTRICT COURT**
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

147932 - SH

**February 21, 2008
15:34:49**

Civ Fil Non-Pris

USAO #.: 08CV0336

Judge..: JOHN A HOUSTON

Amount.: \$350.00 CK

Check#.: BC18573

Total-> \$350.00

FROM: HUBBARD V. S&C RAMIREZ ENTERPR